

REFERENCE TITLE: dangerous and incompetent defendants; commitment

AN ACT AMENDING SECTION 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4518; RELATING TO INCOMPETENCE.

13-4517. Incompetent defendants; disposition

If the court finds that a defendant is incompetent to stand trial and that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency, any party may request that the court:

1. Remand the defendant to the custody of the department of health services for the institution of civil commitment proceedings pursuant to title 36, chapter 5.
2. Appoint a guardian pursuant to title 14, chapter 5.
3. Release the defendant from custody and dismiss the charges against the defendant without prejudice.
4. DETERMINE IF THE DEFENDANT IS DANGEROUS AND INCOMPETENT PURSUANT TO SECTION 13-4518.

Sec. 2. Title 13, chapter 41, Arizona Revised Statutes, is amended by adding section 13-4518, to read:

13-4518. Dangerous and incompetent defendants; hearing; disposition; definition

A. WITHIN THIRTY DAYS AFTER A PARTY REQUESTS A HEARING PURSUANT TO SECTION 13-4517, THE COURT SHALL CONDUCT A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS AND INCOMPETENT TO STAND TRIAL. THE COURT MAY CONTINUE THE HEARING IF THE COURT FINDS THAT ADDITIONAL EXAMINATIONS OF THE DEFENDANT ARE NECESSARY OR AT THE REQUEST OF EITHER PARTY ON A SHOWING OF GOOD CAUSE.

B. THE STATE SHALL PROVE THE PERSON IS DANGEROUS AND INCOMPETENT TO STAND TRIAL BY CLEAR AND CONVINCING EVIDENCE BASED ON THE TESTIMONY OF AT LEAST TWO PEOPLE WHO HAVE EVALUATED THE PERSON, ONE OF WHOM MUST BE A PSYCHIATRIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13, 17 OR 19.1.

C. IF THE COURT FINDS THAT THE DEFENDANT IS DANGEROUS AND INCOMPETENT TO STAND TRIAL THE COURT SHALL COMMIT THE DEFENDANT

TO THE DEPARTMENT OF HEALTH SERVICES FOR PLACEMENT IN A LICENSED FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL. THE DEFENDANT SHALL RECEIVE EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE PERSON COMPETENT AND NONDANGEROUS.

D. WITHIN NINETY DAYS AFTER THE DEFENDANT'S COMMITMENT AND EVERY ONE HUNDRED EIGHTY DAYS THEREAFTER, THE DEFENDANT'S TREATMENT SUPERVISOR SHALL SUBMIT TO THE COURT A REPORT THAT STATES THE TREATMENT THAT THE DEFENDANT HAS RECEIVED, A PROGNOSIS FOR THE DEFENDANT'S RESTORATION TO COMPETENCY AND WHETHER THE DEFENDANT REMAINS DANGEROUS.

E. IF THE TREATMENT SUPERVISOR SUBMITS A REPORT TO THE COURT PURSUANT TO SUBSECTION D OF THIS SECTION THAT INDICATES THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL OR IS NO LONGER DANGEROUS, THE COURT SHALL CONDUCT A HEARING TO DETERMINE IF THE DEFENDANT IS STILL DANGEROUS AND/OR INCOMPETENT. IF

1. A CERTIFICATION THAT THE DEFENDANT IS NO LONGER DANGEROUS BY AT LEAST ONE PSYCHOLOGIST OR PSYCHIATRIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13, 17 OR 19.1.

2. IF THE DEFENDANT IS NO LONGER DANGEROUS IN WHOLE OR IN PART BECAUSE OF MEDICATION THAT THE DEFENDANT IS TAKING, THE LIKELIHOOD THAT THE DEFENDANT WILL CONTINUE TO TAKE THE MEDICATION AND COMPLY WITH OUTPATIENT TREATMENT.

F. AFTER A HEARING PURSUANT TO SUBSECTION E OF THIS SECTION, IF THE COURT FINDS EITHER THAT:

1. THE DEFENDANT'S COMPETENCY IS RESTORED, THE DEFENDANT SHALL BE TRANSFERRED TO THE APPROPRIATE JURISDICTION FOR THE CRIMINAL CHARGES AGAINST THE DEFENDANT TO PROCEED.

2. THE DEFENDANT'S COMPETENCY IS NOT RESTORED:

(a) IF THE DEFENDANT IS NOT DANGEROUS, THE COURT MAY RELEASE THE DEFENDANT FROM CUSTODY AND DISMISS THE CHARGES AGAINST THE DEFENDANT WITHOUT PREJUDICE.

(b) IF THE DEFENDANT IS NOT DANGEROUS IN WHOLE OR IN PART BECAUSE THE DEFENDANT IS TAKING MEDICATION, THE COURT MAY RELEASE THE DEFENDANT ON THE CONDITION THAT THE DEFENDANT CONTINUE TO TAKE THE MEDICATION AND SUBMIT TO MONITORING AND TESTING.

(c) IF THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL REMAIN COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF HEALTH SERVICES UNDER THE SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL UNTIL EITHER:

(i) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.

(ii) THE COURT FINDS THAT THE DEFENDANT IS NOT DANGEROUS.

(iii) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO THE MAXIMUM SENTENCE THE DEFENDANT WOULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN CONVICTED IN A CRIMINAL PROCEEDING.

G. THIS SECTION DOES NOT PREVENT ANY PERSON FROM INITIATING EMERGENCY COMMITMENT PROCEEDINGS AGAINST THE DEFENDANT PURSUANT TO TITLE 36, CHAPTER 5.

H. FOR THE PURPOSES OF THIS SECTION, "DANGEROUS" MEANS A PERSON WHO IS ALLEGED TO HAVE COMMITTED A SERIOUS OFFENSE AS DEFINED IN SECTION 13-706 AND WHO IS LIKELY TO COMMIT ANOTHER SERIOUS OFFENSE OR CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.